



# Memorandum

**TO:** COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** September 13, 2022

Approved

Date

9/15/22

**SUBJECT: CITY INITIATIVES ROADMAP: CITYWIDE RESIDENTIAL ANTI-DISPLACEMENT STRATEGY STATUS REPORT**

## **RECOMMENDATION**

Accept the status report on the Citywide Residential Anti-Displacement Strategy.

## **OUTCOME**

The Community and Economic Development (CED) Committee will receive an update on the status of staff's work on the top four priority recommendations in the Citywide Residential Anti-Displacement Strategy (Anti-Displacement Strategy) and near-term priorities.

## **EXECUTIVE SUMMARY**

The end of the fourth quarter of Fiscal Year 2021-2022 saw the end of remaining but limited statewide eviction protections for tenants with approved or in process applications for the CA COVID-19 Rent Relief program (CA Program). Furthermore, tenants who submitted their rental assistance applications before the March 31, 2022 cut-off date could only receive assistance through March 31, 2022. Households who continued to struggle to pay rent on April 1, 2022, could only try to work with their landlord for a reprieve or seek out other already strained community rental assistance programs.

Staff identified three areas to focus on to prevent unnecessary evictions of vulnerable residents who may risk eviction after June 30, 2022, if their application was denied or underfunded or who risked eviction for unpaid rent after April 1, 2022. The primary efforts detailed in this memorandum were proactive outreach to tenants, launching the Eviction Diversion and

Settlement Program (Diversion Program), and increasing the presence in the Santa Clara County Superior Court.

These efforts have prevented hundreds of City residents from becoming displaced after COVID-19 eviction protections ended and mitigated or eliminated rent losses some landlords might have experienced. As residential unlawful detainer lawsuit filings with Santa Clara County Superior Court continue to rise to a historic monthly high, continuing and building on these programs will be critical to furthering the goals of Recommendation 1 in the City's Anti-Displacement Strategy.

In addition to eviction prevention, staff focused its efforts in the past quarter on advancing state legislation to support the use of anti-displacement tenant preferences. The City's co-sponsored bill, Senate Bill 649 (Cortese, 2021) has passed both houses of the California Legislature and, as of early September, was on its way to the Governor's Office. Once the additional staff is hired in fall 2022, tenant preferences program development work will resume.

Staff's work on developing a draft Community Opportunity to Purchase program largely was on hiatus in the past quarter due to staff's requirement to focus on the City's draft sixth cycle Housing Element. However, regular meetings with SOMOS Mayfair continued, and staff obtained feedback from SOMOS and other community-based organizations on their priorities for the potential program.

Finally, progress on the Housing and Community Development Commission's (Commission) lived experience seat will accelerate over the next few months as new staffing for this initiative has been identified.

## **BACKGROUND**

On September 22, 2020, the City Council approved<sup>1</sup> staff's proposed Citywide Residential Anti-Displacement Strategy. The City Council's initial direction included that staff should focus its work on the top three recommendations:

- 1) Support COVID-19 Recovery Eviction Relief and Mitigation Measures for Renters and Homeowners,
- 2) Create a Neighborhood-based Tenant Preference, and
- 3) Explore a Community Opportunity to Purchase Program (right of first offer to purchase).

The City Council also directed staff to return to City Council in six months with an update on progress on the top three recommendations as well as provide quarterly updates to both the Community and Economic Development (CED) Committee and the NSE Committee.

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<sup>1</sup> File no. 20-1094, item 8.1, <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4635014&GUID=843B7A57-FFCE-411F-81C5-49D3378215A5&Options=&Search=>

In addition, on March 30, 2021, the City Council approved staff's recommendation to amend the top three Anti-Displacement Strategy recommendations by:

- Incorporating existing City Council Policy Priority #11, the Anti-Displacement Tenant Preference Ordinance, into the Citywide Residential Anti-Displacement Strategy Recommendation #2, Create a Neighborhood-based Tenant Preference; and
- Incorporating the City Council's direction from January 12, 2021, to add a seat to the Commission for a commissioner with lived experience in homelessness (lived experience) into the Citywide Residential Anti-Displacement Strategy's Recommendation #4, Increase the Equitable Representation of Historically Underrepresented Communities on City Commissions, and add this item to staff's top priorities.

According to the City Council's direction, the Housing Department staff has provided 12 updates, as follows:

1. NSE Committee on March 11, 2021
2. CED Committee on March 22, 2021
3. City Council on March 30, 2021
4. NSE Committee on August 12, 2021
5. CED Committee on August 23, 2021
6. NSE Committee on November 4, 2021
7. CED Committee on November 22, 2021
8. NSE Committee on March 10, 2022
9. CED Committee on March 28, 2022
10. NSE Committee on June 9, 2022
11. CED Committee on June 27, 2022
12. NSE Committee on September 8, 2022

In addition, staff gave an update on their work to develop a Community Opportunity to Purchase Program to the CED Committee on October 25, 2021.<sup>2</sup>

This report provides updates on recent work on the top four recommendations of the Anti-Displacement Strategy and anticipates upcoming work. In the coming year, given the significant workload involved in bringing this report quarterly to both NSE and CED Committees, the Housing Department will bring this report to the NSE Committee twice a year and will no longer regularly take this report to CED Committee.

## **ANALYSIS**

The following information provides updates on work underway to advance the priority work efforts under the top four strategies of the Anti-Displacement Strategy.

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<sup>22</sup> File No. CC 21-279, <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5152386&GUID=B751E6D2-EA01-4AF6-B442-752CDC3FB8FD&Options=&Search=>.

### **Recommendation 1: Support COVID-19 Recovery Eviction Relief and Mitigation Measures for Renters and Homeowners**

Over the past quarter, Housing Department staff continued efforts to keep vulnerable San José residents housed despite the state's COVID-19 eviction protections ending and the closure of the State's CA Program. The Housing Department will shift its focus to eviction diversion and tenant rights and education. This report provides updates on the following:

- CA Program Closeout
- City of San José Eviction Prevention Help Centers (Help Centers)
- Eviction Diversion and Settlement Program (Diversion Program)
- Legal and Unlawful Detainer Assistance
- Weekly Eviction Prevention Courthouse Clinic

#### **CA Program Closeout**

As reported in the Housing Department's prior report to the CED Committee, the California State Legislature passed legislation that closed the CA Program to new applications March 31, 2022, and barred the CA Program from providing rental assistance beyond March 31, 2022. After June 30, 2022, tenants with applications awaiting final decision are vulnerable to eviction. During the last quarter, the state increased the processing speed for the remaining applications in anticipation of limited eviction protections expiring on June 30, 2022. As of August 28, 2022, \$128 million in rental and utility assistance had been paid on behalf of 10,653 San José households by the CA Program. Countywide, including San José, so far \$196.8 million has been paid on behalf of 16,283 households.<sup>3</sup>

In early June 2022, legal aid and tenant advocacy organizations brought a lawsuit against the California Department of Housing and Community Development (HCD), the agency responsible for administering the CA Program.<sup>4</sup> In court documents, the groups alleged that HCD ran the CA Program in an "opaque and discriminatory manner." The lawsuit further asserted that HCD did not or refused to provide applicants with adequate information about their application's denial, providing vague appeal notices and ultimately left vulnerable applicants no meaningful way to appeal their application decision. On July 14, 2022, a preliminary injunction was issued against HCD in the case. The order prohibits HCD and the CA Program from:

1. Issuing any denials of rental assistance to applicants who have timely submitted their applications and are awaiting an initial determination, and affirming a denial in any pending appeals; and
2. Letting unappealed denials for which the 30-day time period to appeal had not yet elapsed as of July 7, 2022, become "final denials" after the 30-day time period.

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<sup>3</sup> CA COVID-19 Rent Relief Program dashboard: [https://housing.ca.gov/covid\\_rr/dashboard.html](https://housing.ca.gov/covid_rr/dashboard.html).

<sup>4</sup> <https://wclp.org/wp-content/uploads/2022/06/Petition-for-Writ-of-Mandate-DP.pdf>

As a result of the court's order, HCD is reviewing thousands of CA Program applications that were going to be denied. This has provided some reprieve for worried tenants and some hope for landlords who thought they may not secure government funding for unpaid rent. However, as further discussed below, many tenants have continued to struggle to pay rent since March 31, 2022.

### **City of San José Eviction Prevention Help Centers**

Over a year ago, in response to the pandemic, the City launched two Help Centers for tenants and landlords to get help with emergency rental assistance applications. The Help Centers were located at San José City Hall 12<sup>th</sup> Floor and at the Franklin McKinley School District. At these sites, rental assistance navigators helped tenants submit rental assistance applications with assistance provided in multiple languages including English, Spanish, Vietnamese, and Mandarin. The Help Centers have also offered access to legal services, with staff from the Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley present on-site, and available virtually Monday through Friday.

As the CA Program winds down, the work of the Help Centers has focused on supporting tenants who have pending applications or appeals and on cases for the Diversion Program described below. The Help Centers continue to engage with tenants and landlords in-person and by phone, although the number of clients has decreased due to most rental assistance applications having been paid out. Some residents visiting the Help Centers are seeking help in uploading more information or documentation requested by the CA Program or need assistance appealing a decision. Many of the tenants who visit or contact the Help Centers still have not recovered from the economic impact of the pandemic and find themselves struggling to cover expenses even though they have resumed receiving regular income. Staff evaluates tenants most at risk of eviction for eligibility for the Diversion Program and tries to connect the tenants with community resources. However, with the CA Program's cut-off of March 31, 2022, local community services organizations and the Homelessness Prevention System, a partnership between public and private funders, and non-profit service providers, are extremely stressed and have only been able to assist in limited cases during the last few months.

Almost 500 households have received legal services through the Help Centers walk-in and virtual daily legal service hours staffed by Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley since these services began in late 2021. The number of tenants seeking legal assistance during in-person hours at the Help Centers has increased significantly in recent months. Most tenants seeking legal services have received a termination notice or been served with an unlawful detainer lawsuit.

On August 29, 2022, the Housing Department had to temporarily close the Help Center at the Franklin McKinley School District and opened a temporary administrative space for staff at the City's Kirk Community Center on August 30, 2022. The City's lease with the Franklin McKinley School District expired and the lease needed to be renegotiated to allow staff to remain longer. An

agreement has been reached with the Franklin McKinley School District that will allow staff to use the site until the end of October.

The Housing Department continues its efforts to secure a new space for the Help Center. To date, the Housing Department has engaged several community partners such as the County of Santa Clara (County) Office of Supportive Housing, County Executive's Office, SOMOS Mayfair, and affordable housing developers to help locate space. The Housing Department is also working interdepartmentally with the Office of Economic Development, the Department of Parks, Recreation and Neighborhood Services, and the San José Public Library to search for available city locations. The Help Center space criteria are accessible nights and weekends, space for five or more workstations, sufficient parking, Wi-Fi access, restrooms, a waiting area, access to kitchen space for staff breaks, and close to public transportation. The Department continues to look for a space in east San José where the residents have been most impacted and are exploring other ways to ensure the Help Centers' services are accessible to the communities most in need.

### **Eviction Diversion and Settlement Program Launch**

As reported to the City Council at its June 28, 2022 meeting, the Housing Department and the County's Office of Supportive Housing, in coordination with Sacred Heart Community Services, Destination: Home, and the Project Sentinel Court Mediation Program, successfully launched the Diversion Program. The Diversion Program was originally developed to mitigate the delays in rent relief application processing that put some tenants at imminent risk of eviction. The program uses the City's and County's remaining funds from round one of federal Emergency Rental Assistance funds to stop a pending unlawful detainer action, based in whole or in part, on nonpayment of rent, by quickly paying directly to the landlord unpaid amounts on behalf of tenants with pending state rent relief applications. The County's Office of Supportive Housing could no longer support the Diversion Program case review and payment processing after June 30, 2022. The Housing Department now does all levels of Diversion Program case review and Sacred Heart Community Services is supporting the Diversion Program by doing final closeout of cases and issuing payment.<sup>5</sup>

Candidates for the Diversion Program are sought out primarily during the unlawful detainer calendar Wednesday and Thursday mornings when tenants and landlords are appearing in court. Housing Department staff attend these calendar court dates and works with day-of-court mediators, tenant and landlord attorneys, and unrepresented parties to identify and screen possible diversion program participants. When parties are found eligible and agree to participate, a mediator assists them with entering into a stipulated settlement agreement. Once the stipulation is signed, the Housing Department staff work with the parties to obtain paperwork and schedule follow-ups to finalize the processing and withdrawal of the pending state rent relief application. In addition, Diversion Program referrals come from tenants with unlawful detainers who visit the Help Centers, tenant and landlord attorneys and other community partners.

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<sup>5</sup> Sacred Heart Community Services holds the remaining funds Emergency Rental Assistance monies directly allocated to the City pursuant to the contract to administer the local emergency rental assistance program that ran from May 2021 to September 2021.

This voluntary Diversion Program is limited to specific circumstances due to constraints of the federal funding source, state law, and processing capacity. Diversion Program cases must meet the following criteria:

- The tenant must have completed a rental assistance application that includes rent between October 2021 and March 2022. The pending applications and denials do not preclude screening.
- There must be an unlawful detainer action filed against the tenant that is pending in court or, the Diversion Program makes an assessment that the tenant is at imminent risk of eviction in addition to other criteria being met.
- Landlords must agree to participate in Diversion Program and enter into a stipulated settlement filed with the court that they will dismiss the unlawful detainer action once they receive payment from the diversion program.
- Both landlord and tenant sign an agreement with the City stating they will work with Diversion Program staff to provide all documentation necessary to process the application and will withdraw their pending application with the state, to avoid any duplication of federal funds.
- Tenants and landlords work with the day-of-court mediators and/or landlord and tenant attorneys to enter into a stipulated settlement agreement that is presented and approved by the judge assigned to the unlawful detainer calendar.
- Sacred Heart Community Services also supports participants in the Diversion Program when further financial or other resources are needed to resolve the case.

Thus far, 15 Diversion Program cases have been successfully paid out or submitted for payment, preventing forced evictions of 15 households. Currently, Housing Department staff is working with 56 more households and their landlords to enroll them in the Diversion Program. The Emergency Rental Assistance funding must be obligated by September 30, 2022, unless the U.S. Department of the Treasury grants an extension. The Housing Department staff is reviewing revised U.S. Department of the Treasury guidance regarding American Rescue Plan Act monies to see if there are other funding sources to use that could extend the Diversion Program beyond September 30, 2022. With the anticipated need to continue the Diversion Program based on the increase in unlawful detainer filings, Housing Department staff is also exploring other funding options.

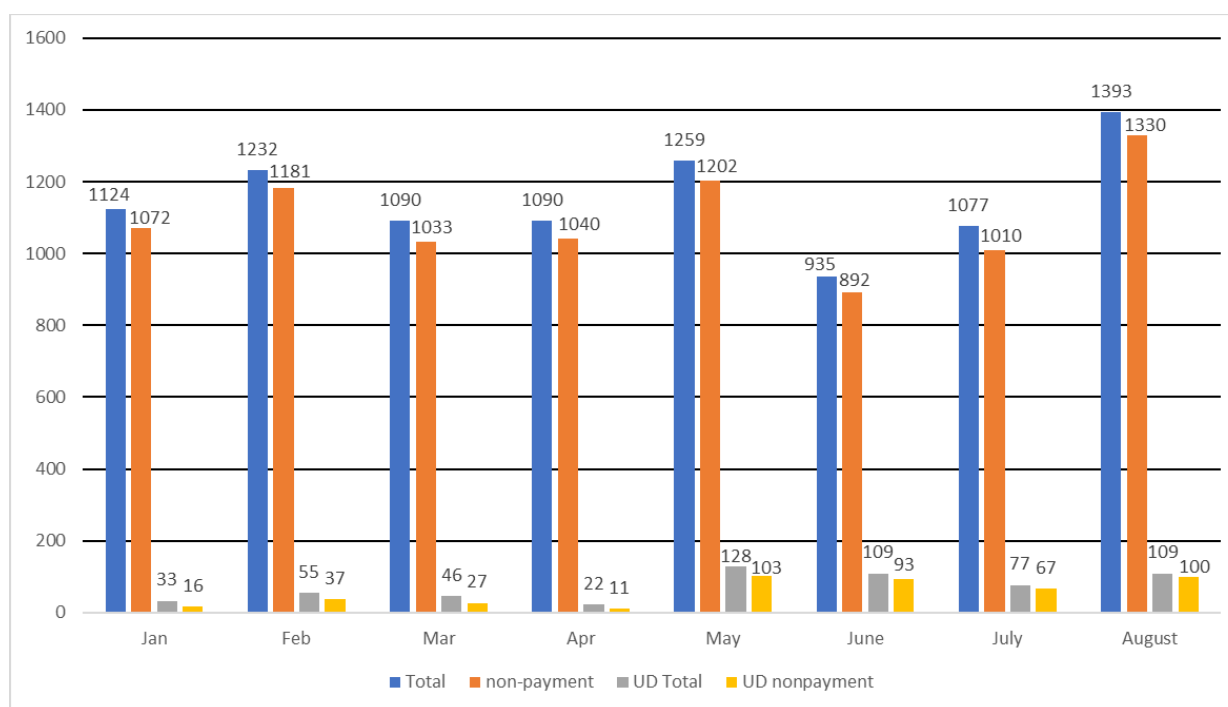
### **Legal and Unlawful Detainer Assistance**

Unlawful detainer filings in the County steadily increased since the state's stronger eviction protections ended on September 30, 2021. However, June and July saw a significant increase in unlawful detainer filings in the County, surpassing even pre-pandemic levels.

Since March 18, 2020, staff continued to receive, process, and track termination notices and unlawful detainer filings. Figure 1 summarizes termination notices related to nonpayment of rent

and unlawful detainers by month to show the trend. Table 1 shows the monthly totals of unlawful detainers based in whole or in part on nonpayment of rent involving apartments covered by the Tenant Protection Ordinance (TPO) filed with the Department since protections ended on March 31, 2022. Also shown is the total number of residential unlawful detainers filed countywide with Santa Clara County Superior Court during that same period as compared to the pre-pandemic monthly average.

**Figure 1: Preliminary Data Housing Department Received Regarding Nonpayment of Rent Notices and Unlawful Detainers Based in Whole or Part on Nonpayment of Rent, April – August 2022**



**Table 1: Unlawful Detainers Filed Pre-Pandemic and after Protections Ended March 31, 2022**

	Unlawful Detainers Filed with Housing Department Based in Whole or Part on Nonpayment of Rent	Total and Monthly Average of Residential Unlawful Detainers Filed with Santa Clara County Superior Court*
<b>Monthly average 2019 Pre-pandemic calendar year</b>	N/A*	avg. 202/month
<b>April 2022</b>	11	162
<b>May 2022</b>	103	128
<b>June 2022</b>	93	296



	<b>Unlawful Detainers Filed with Housing Department Based in Whole or Part on Nonpayment of Rent</b>	<b>Total and Monthly Average of Residential Unlawful Detainers Filed with Santa Clara County Superior Court*</b>
<b>July 2022</b>	<b>67</b>	<b>318</b>
<b>August 2022</b>	<b>100</b>	<b>N/A</b>

\*The number of landlords in compliance with the TPO requirement to file unlawful detainer actions for covered units prior did not become meaningful until after the pandemic when more landlords and landlord attorneys became educated about the requirement. Thus, the data for unlawful detainers filed with City pre-2020 is not meaningful for this analysis.

\*Note: Housing Department staff obtained residential unlawful detainer filing statistics from Santa Clara County Superior Court for April through July 2022 but does not have data on outcomes from these filings.

Figure 1 shows an increase in May of this year of both unlawful detainer lawsuits based on nonpayment of rent and nonpayment of rent notices submitted to the City pursuant to the TPO. However, there is a significant decrease in submittals of these filings and notices in June and July which is not reflective of the trend seen with Santa Clara County Superior Court. The Housing Department received information indicating an attorney for a landlord is taking the position based that notice to pay or quit is not a notice that is required to be filed with the City pursuant to the TPO and that an unlawful detainer lawsuit based on such notice also is not required to be filed with the City. After a preliminary review of the database that stores information on TPO related submissions, staff noted that there were far fewer unlawful detainer filings submitted by two or three prominent landlord attorneys. The Housing Department is researching this possible issue of how landlords might be interpreting the TPO's required submittals and doing a more thorough analysis to understand the decrease in submittals. Notably, the number of nonpayment notice submissions increased significantly (>300) in the month of August as compared to the previous month.

In Table 1, the data shows that there has been a sharp increase in unlawful detainer filings with Santa Clara County Superior Court. The monthly numbers for June and July surpass pre-pandemic levels. Related to the issue described above, the number of unlawful detainer lawsuits submitted to the City is likely not reflective of the actual number of unlawful detainer actions being filed against San José tenants.

On a weekly basis, Housing Department staff continues to mail informational flyers in English, Spanish and Vietnamese to tenants of landlords that filed three-day Notices to Pay with the City, as required by the TPO.

The Housing Department oversees the City's current contracts with the Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley to provide services at the Help Centers and remotely. The Law Foundation of Silicon Valley provides legal consultations for walk-in tenants at the City's Help Centers. This includes assistance in drafting responses to unlawful detainer complaints, advocacy and counseling related to completing or responding to a Notice of Termination of Tenancy, legal referrals to Fair Housing agencies, client advice/education

regarding City ordinances and rent moratoriums enacted because of COVID-19, and assistance developing a legal defense for small claims court.

Like many employers recently, the legal aid organizations serving the County are struggling to hire and retain staff. The Housing Department's legal contract partners have asked to adjust deliverables under some contracts due to staffing shortages. Unfortunately, the need for tenant legal services is higher than ever.

In addition to referring tenants to the Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley, the Housing Department also works to connect tenants who have unlawful detainer lawsuits with the Santa Clara County Superior Court Self-Help Center and the weekly court clinic discussed below.

### **Weekly Eviction Prevention Courthouse Clinic**

As reported to the City Council in June, Housing Department staff collaborated with the County, Sacred Heart Community Services, Destination: Home, Court Administration, Santa Clara County Superior Court Self-Help Center staff, and Project Sentinel to establish a comprehensive weekly Eviction Prevention Courthouse clinic (Court Clinic) that offers a broad spectrum of resources to parties involved in unlawful detainer actions.

The Court Clinic launched on June 1, 2022, and is held in the Santa Clara County Superior Court in downtown San José on Wednesdays from 10:00 a.m. to 12:45 p.m. The weekly Court Clinic is open to all parties and strives to provide as many opportunities as possible to help parties resolve their disputes and, ideally, avoid evictions.<sup>6</sup> The Court Clinic is currently staffed as follows:

- Housing Department staff is available to assist with tasks and questions related to pending state rent relief applications and to screen for eligibility for Diversion Program.
- Sacred Heart Community Services is available to screen tenants for the Homelessness Prevention Program and other resources that could help them avoid eviction or transition to more stable housing.
- Santa Clara County Superior Court Self-Help Center staff is available to assist tenants with preparing and filing answers to unlawful detainer actions and other emergency filings related to eviction; they also provide assistance to smaller unrepresented landlords.
- Project Sentinel's Court Mediation program is available to provide tenants and landlords dispute resolution options that could help parties avoid going to trial or assist landlords in resolving their issues with a tenant without filing an unlawful detainer action.

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<sup>6</sup> Note that a Housing Collaborative Court was included in Recommendation 1 of the Citywide Residential Anti-Displacement Strategy.

The weekly Court Clinic is open during the busiest unlawful detainer court calendar. This allows the judge, attorneys, and mediators to refer litigants to the Court Clinic when it seems they would benefit from the services offered.

At least ten households visit the Court Clinic each week. Visitors who need assistance with legal filings are triaged so that those with the most urgent need are prioritized. Housing Department staff can make referrals to the Help Centers' legal services walk-in hours for those who have more time to file.

The Court Clinic is not intended to be a temporary program. It is the goal of the partners to make the weekly Court Clinic a permanent program at the court. This may lead to a significant decrease in eviction judgments and tenant displacement. So far, 18 households have been referred to the Diversion Program from the Court Clinic effort. As a result, these households avoided forced evictions and their respective property owners will be compensated for back rent owed.

On August 2, 2022, the White House held a virtual summit on eviction reform and spotlighted eviction diversion programs in New Mexico, Philadelphia, Chicago, New Orleans, Michigan, and Cleveland. Many of these programs include the efforts and strategies that the Housing Department and its partners have put forth in the last several months: court-based eviction diversion programs, having mediators, providing rental assistance navigators, ensuring that social services agencies are present during unlawful detainer calendars and developing strong collaboration among cross-agency stakeholders. White House representatives called for building on the eviction diversion infrastructure put in place during the pandemic to make more lasting permanent changes to the eviction process. White House representatives also announced updated guidance from the U.S. Department of the Treasury concerning the use of American Rescue Plan Act funds. They encouraged jurisdictions to use their remaining funds towards court-based eviction diversion efforts.

### **Recommendation 2: Create Tenant Preferences to Prevent Displacement**

In the past quarter, staff focused its extremely limited capacity on advancing tenant preferences by maintaining momentum behind co-sponsored legislation to support the use of tenant preferences. Staff capacity in the past quarter was consumed by outreach and developing analysis and chapters for the Assessment of Fair Housing and the draft sixth cycle Housing Element, which conducted its first 30-day public review from July 22 to August 21, 2022.

**Definition:** Tenant preferences set aside a percentage of restricted affordable apartments that would otherwise be available to the general public for people who meet certain criteria and are income-eligible. People would apply for affordable apartments and would meet all other requirements as usual, but because of their preference, would have a better chance of being accepted in a set aside of restricted affordable apartments. Staff is designing two preferences:

- **Anti-Displacement Tenant Preference:** Sets aside a portion of affordable apartments for low-income applicants who live in certain identified areas that have a high likelihood of

displacement. The advantage to an anti-displacement tenant preference is that it increases the likelihood that low-income renters at the highest risk of displacement can access affordable homes and stay in the City, either in their neighborhoods or wherever they choose.

- **Neighborhood Tenant Preference:** Sets aside a portion of newly available affordable apartments for low-income applicants who already live in the vicinity of the newly available apartments. Neighborhood tenant preferences can be popular with area residents and local leaders; however, because they operate at a more localized scale, they can be more likely to keep people with similar protected class characteristics in a neighborhood, which can create issues under fair housing law. Careful analysis is required.

This work consists of several parts:

- **Legislation:** Advancing state legislation to reliably use these preferences on bond and tax-credit-financed developments
- **HCD Approval:** Obtaining the HCD's approval of the City's proposed preferences
- **Program Development:** Designing the City's program, working with stakeholders, and obtaining the City Council's approval
- **Implementation:** Creating user guidance and tools, conducting outreach to users, and ensuring the programs are properly implemented
- **Reapprovals:** Collecting improved data for required analysis and seeking annual program-level reapproval from HCD

Due to limited staff capacity, work in the past quarter focused on the first three parts, as follows:

**Legislation:** Senate Bill 649 (2021), co-sponsored by the City and authored by Senator Dave Cortese, would ensure that affordable housing developments using state and federal tax credits and federal private activity bonds are able to reliably administer tenant preferences that help prevent displacement by recognizing low-income residents facing displacement under the law.

**Legislation Update:** Senate Bill 649 was introduced in 2021 and is a two-year bill that already passed from the Senate to the Assembly last year. Therefore, for it to become a law, it needed to pass Assembly policy committees in June, pass the full Assembly by August 31, and be signed by the Governor by September 30. The bill was successfully passed through the Assembly Housing Committee with a 6-to-2 vote on June 29, 2022. It then passed the Assembly Appropriations Committee with a 12-to-3 vote on August 11, 2022. The amended bill was approved on the Assembly Floor on August 29, 2022, and concurred to by the Senate on August 30, 2022. As of the date that staff is submitting this memorandum, the bill is on its way to the Governor for signature.

In the past quarter, the bill was heavily edited by a coalition of several equity organizations in consultation with the author's office, the City and other co-sponsors, HCD, and other stakeholders. Language changes made the bill better align with fair housing law. Edits also increased the public transparency of jurisdictions' tenant preferences and backup materials so that all parties can better understand the definitions and legal support for the programs. State HCD staff worked with the author's office and the co-sponsors cooperatively, but HCD did not take a formal position on the bill.

**HCD Approval:** It is important for the City to obtain HCD's approval of its proposed tenant preferences for three reasons:

- 1) HCD's approval is required if it makes a loan to an affordable development that is using the preference.
- 2) HCD is currently reviewing the adequacy of jurisdictions' fair housing strategies in the forthcoming Housing Element.
- 3) HCD is the Governor's ultimate advisor on housing legislation, including signing or vetoing Senate Bill 649.

In August 2020, HCD staff indicated that the agency would issue formal guidance to jurisdictions before the end of 2020 on the analysis it would require to ensure that tenant preferences were lawful. However, the 2020 timeline was not met. In mid-October 2021, key HCD staff reported that HCD's guidance memorandum was in the final stages of review and was expected to be released by the end of 2021. City staff determined that HCD's release of official guidance was necessary to obtain before conducting preliminary analysis in order to prevent later rework.

**HCD Update:** As of early September 2022, HCD has not released guidance in analyzing lawful preferences.<sup>7</sup> HCD staff declined to give an estimate on the timing for the release of its guidance at three meetings this year in March, May, and June.

**Program Development:** Staff's analysis and design of both tenant preferences have been on hold due to staff's intense current focus on creating a draft sixth cycle Housing Element. Recruitment for a FUSE Fellow to help develop preference program proposals has begun, and the FUSE Fellow is expected to be hired at the end of October 2022. Once adequate staffing is available, staff will reassess the need of continuing to wait for HCD guidance to fully develop the program proposal and reevaluate the risk of future rework versus proceeding with a City program that does not contain state approval and may not be used on affordable housing deals with certain state loans and grants.

**Attachment A** provides an overview of the steps involved in creating the draft program and educating the community about it.

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<sup>7</sup> Staff plans to seek HCD's approval of the Anti-Displacement Tenant Preference first, as HCD is more likely to easily accept the specific data and findings for this preference given its structure.

### **Recommendation 3: Explore a Community Opportunity to Purchase Program**

**Definition:** A Community Opportunity to Purchase (COPA) program would give a qualified nonprofit buyer the right to make the first offer on a residential property covered by COPA that is up for sale. The purpose of COPA is to enable more properties to become income-restricted affordable, to the extent that City subsidies were available, and be owned by mission-oriented nonprofit organizations that would cooperate with the City to keep them affordable in perpetuity.

Last quarter, most of staff's COPA work continued to be on temporary hold due to the need to focus on producing a draft sixth cycle Housing Element. Work done on COPA in the past quarter focused on partner work and staffing.

**Community Partner:** In the past quarter, staff continued to meet weekly or biweekly with SOMOS Mayfair, the City's community partner receiving funding from the Partnership for the Bay's Future through the San Francisco Foundation. Staff also participated in a large meeting with SOMOS Mayfair and other community partners in its coalition in June 2022 about the next steps in the COPA approval process.

**Staffing:** The City's new Breakthrough Grant Fellow, Heather Bromfield, started work in June 2022. This fellowship is a two-year position funded by the Partnership for the Bay's Future through the San Francisco Foundation. The Fellow's focus will be to continue work on a COPA proposal, work closely with SOMOS Mayfair, conduct community outreach, and if the City Council approves COPA, help to implement the program. The Fellow will also support strategies for Community Land Trusts, other preservation initiatives, and potentially, tenant preferences.

**Next steps:** Given that time has elapsed since the COPA community meetings in December 2021 and January 2022 and because staff received feedback during the public review period that may alter its initial proposal, staff will release a revised draft program description to the public and hold additional meetings in late 2022 and early 2023. Table 2 contains updated milestones for COPA program development (with new activities noted in *italics*).

***Table 2: COPA Revised Milestones***

<b>Actions</b>	<b>Timing</b>
Prepared draft program description for public review	Nov. 2021
Held public review period of the draft program description	Nov. 30, 2021 to Feb. 1, 2022
Held seven broad community meetings, took comments on the draft proposal	Dec. 2021 to Jan. 2022
Synthesized feedback, began writing decision memo, met with stakeholders	Feb. to Mar. 2022
Temporary pause due to Housing Element deadlines	Apr. to Aug. 2022
<i>Release revised program description for public review</i>	<i>Fall 2022</i>
<i>Hold stakeholder meetings</i>	<i>late 2022 – early 2023</i>
<i>Hold community meetings on revised program description</i>	<i>late 2022 – early 2023</i>

<b>Actions</b>	<b>Timing</b>
Draft program to HCDC	Spring 2023
Draft program to City Council	Spring 2023

Additionally, **Attachment A** provides an overview of the steps involved in creating the draft program and educating the community about it.

#### **Recommendation 4: Increase Equitable Representation of Historically Underrepresented Communities on City Commissions**

**Definition:** Recommendation 4 of the Citywide Anti-Displacement Strategy involves an analysis of the membership composition of the Housing and Community Development Commission (Commission) and the Neighborhoods Commission. The purpose of Recommendation 4 is to determine whether membership is representative of the full range of San José residents and to identify any barriers to participation. The first focus of this work has been to create a designated seat on the Commission for a lived experience commissioner pursuant to City Council direction on January 12, 2021. Staff's work plan focused on: 1) researching and developing new guidelines and resources for onboarding lived experience commissioners, and 2) establishing a recommended stipend model for the lived experience commissioner seat.

**Approval:** On April 14, 2022, the City Council approved a municipal code amendment to add a Commission seat for a person with lived experience as well as an alternate member.

**Implementation:** Last quarter, as expected, the Housing Department's ability to begin implementation of the lived experience seat was severely constrained due to key staff's departure from the City, and existing staff's need to focus on the draft Housing Element. In the next two quarters, newly-hired Housing Department staff will work with the City Clerk's Office to amend the Commission application to be appropriate for this seat. Staff also will inform organizations of the open recruitment to help attract candidates. Implementation of compensation, supportive training, and systems needed for the lived experience seat will occur over the next few months now that staff is available to work on this priority project.

#### **CONCLUSION**

Staff continues to make progress on the top four anti-displacement priorities directed by the City Council. In the last quarter, staff focused heavily on establishing an eviction diversion and settlement program, providing access to legal services at the City's Help Centers, and advocating for Senate Bill 649, the City's co-sponsored tenant preferences state legislation. In the next six months, the Housing Department will focus on strengthening its eviction diversion efforts, progressing on tenant preferences analysis and program development, and helping to fill the new lived experience Commission seat.

### **EVALUATION AND FOLLOW-UP**

Staff will provide updates twice a year on its work under the Citywide Anti-Displacement Strategy to the NSE Committee and as needed at the CED Committee in the current fiscal year. The second report will be in spring 2023 for the NSE Committee.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum aligns with one or more of Climate Smart San José's energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the September 26, 2022, CED Committee meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

Staff will engage the Commission and solicit feedback on specific recommendations of the Anti-Displacement Strategy as each one is developed.

### **CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

JACKY MORALES-FERRAND  
Director, Department of Housing



The primary authors of this memorandum are Kristen Clements, Division Manager and Emily Hislop, Division Manager. For questions, please contact Kristen Clements at [Kristen.clements@sanjoseca.gov](mailto:Kristen.clements@sanjoseca.gov).

**Attachment:**

**Attachment A:** Updated Work Plans for Top Three Highest Priority Anti-Displacement Recommendations

**ATTACHMENT A**  
**Updated Work Plans for Top Three Highest Priority**  
**Anti-Displacement Recommendations**

<b>1. COVID-19 Recovery Eviction Relief and Mitigation Measures for Renters and Homeowners Work Plan</b>		
<b>Task</b>	<b>Description</b>	<b>Timeline</b>
<b>Advocacy</b>	Support active federal and state legislation and budget proposals to repay and subsidize back rent and mortgages, to help mitigate the economic impact of COVID-19 on housing providers and prevent displacement of residents	Completed and ongoing
	Express City support for legislation on eviction and foreclosure prevention and housing recovery from COVID-19 on the 2021 citywide legislative priorities	
<b>Program Development and Research</b>	Plug into coordinated response across City departments for COVID-19 relief and recovery	Completed and ongoing
	Seek advice and assistance from universities and think-tanks on tracking outcomes	
	Survey existing anti-displacement housing programs to identify impediments to eligibility for immigrant households most at risk of homelessness and displacement	Completed
	Assist Bloomberg/Harvard to survey San José small property owners	Completed
	Research COVID-19 housing recovery strategies of other large cities and recovery metrics they are tracking	
	Work with Urban Institute and the City of Los Angeles on COVID-19 response study	Completed
	Pinpoint possible administrative program changes to remove barriers for immigrant households	
	Develop a plan to track data on the success of repayment plans to avoid resident displacement from their homes and from the City, and on the financial condition of small property owners	Ongoing
<b>Community Outreach</b>	Release Request for Proposals to study estimated cost of Right to Counsel for Santa Clara County per City Council direction	2022
	Interview community-based organizations (CBOs) serving COVID-19 impacted residents to determine needs	Completed
	Participate in existing working groups driving COVID-19 response and recovery to align efforts and eliminate duplication	
	Interview community leaders in highly COVID-19 impacted neighborhoods with renters at risk of displacement in zip codes 95233, 95127, 95116, and 95148	Completed

<b>Community Outreach</b>	Prior to the end of the eviction moratorium, hold or attend COVID-19 housing and displacement meetings led by elected leaders convening civic and private sector leaders, residents, and CBOs to: <ol style="list-style-type: none"> <li>1. Hear experiences of stakeholders, re: housing needs and COVID-19 and identify urgent housing problems that must be addressed</li> <li>2. Develop equitable short- and long-term housing recovery strategies</li> </ol>	Deleted/Part of Recovery Task Force
	Analyze feedback and community-led recommendations to inform future housing funding priorities and develop recommendations on policy changes for City Council consideration	Ongoing
<b>Funding</b>	Design system and administer emergency rent assistance for extremely-low-income and undocumented local residents and coordinate CBOs together with the County	Completed
	Identify available and possible new sources of ongoing funding for legal services to prevent eviction, housing collaborative court positions, and housing mediation services if county resources are insufficient	Completed / Ongoing
	Identify available funding sources, including philanthropic and private grants, for emergency planning and preparedness activities for communities most vulnerable to disaster and/or highly impacted by COVID-19	2022

<b>2. Tenant Preferences to Prevent Displacement Work Plan</b>		
<b>Phase</b>	<b>Description</b>	<b>Timeline</b>
<b>Program Development and Research</b>	Meet with state HCD to clarify policy parameters and necessary fair housing analysis	Completed
	Receive additional guidance from HCD on its revised fair housing analysis framework	
	Work with HCD to identify a timeline for its issuance of final guidance on tenant preferences	TBD
	Perform disparate impact analysis and do other HCD-required analysis	
	Determine how to prioritize and administer different preferences and finalize determination on which production programs will incorporate preferences	
	Update rent roll online systems programming to incorporate demographic data for existing affordable housing residents	Completed
<b>Legislation</b>	Work with City Attorney's office to create draft legislation	Completed
	Support the bill through meetings with potential authors, stakeholders, HCD, assembly and senate policy committee staffs	Ongoing
	Apply for FUSE Fellow to support advocacy, analysis, and outreach	Q1-Q3 2022
	Work with City Attorney's office to create legal findings in support of legislation and ordinance and approve proposed parameters	Q3 2022
<b>Community Outreach and</b>	Provide revised information, legal analysis, and disparate impact analysis to HCD for both proposed preferences	<i>On hold pending HCD</i>
	Update draft Ordinance; create program descriptions	

<b>Feedback</b>	Issue survey to owners of properties with affordable apartments that would be subject to the program	<i>guidance / Fellow staffing</i>
	Seek and incorporate HCD feedback on City's analysis and submissions	
	Obtain HCD approval of the City's methodology and analysis	TBD
	Decide timing to seek HCD approval for second preference	TBD
	Stakeholder meetings on the draft program (e.g., community and neighborhood, property owners and managers, residents/advocates)	TBD
	Hold public meetings on the draft program to get input	
<b>Program Finalization and Approvals</b>	Hold next round of meetings with key stakeholders on drafts	TBD
	Make final program revisions based on feedback	
	Post final draft program for public review	
	Present draft program to the Housing and Community Development Commission	
	Present draft program to CED Committee	
	City Council approves program and ordinance	
<b>Program Implementation</b>	Issue guidance for property owners and the public	TBD
	Hold educational meetings for property owners/managers	
	Host public meetings to inform about new preferences	
	Conduct webinars for the public (multiple languages)	
	Conduct community outreach (e.g., neighborhood meetings, tabling, associations)	
	Fully implement renter online portal (to get applicant protected class data, screen applicants for preference eligibility)	TBD
	Do analysis annually and submit for HCD reviews	Ongoing

*\*Note: Italicized items indicate additions to the Work Plan.*

<b>3. Community Opportunity to Purchase Program Work Plan</b>		
<b>Phase</b>	<b>Description</b>	<b>Timeline</b>
<b>Program Development</b>	Research COPA results and management in comparable cities	Completed
	Meet with counterparts in comparable cities and assess best practices and processes	
	Work with City Attorney's office to identify legal issues and approve proposed parameters	
	Compile data to determine program parameters (e.g., applicability, terms, process, timelines, qualification of purchasers, City staffing needs) and market research	Completed
	Hold Request for Proposal and hire community engagement consultant for Anti-Displacement Working Group; focus technical team on COPA	
<b>Community Outreach and Policy Feedback</b>	Meet with specialized stakeholders (e.g., property owners, realtors, brokers, lenders, other experts)	Completed
	Meet with qualified potential nonprofit developers	
	Prepare analysis of long-term funding needs and possible sources for financing acquisition and rehabilitation/permanent	
	Hold working group meetings – Technical Advisory Committee and broader Stakeholder Advisory Committee (ongoing)	
	Create the first draft of program and supporting materials incorporating community feedback and study findings	
	Hold stakeholder public review period and feedback	
<b>Program Finalization and Approvals</b>	Make refinements based on first public review feedback	Q3 2022 to Q2 2023
	Hold meetings with key stakeholders on refinements	
	<i>Additional public meetings on revised draft program</i>	
	Present to the Housing and Community Development Commission	
	Program revisions based on Housing and Community Development Commission comments	
	Consult with stakeholders and community	
	City Council approves program and directs staff to return with ordinance	Spring 2023
	City Council approves ordinance	Spring 2023

<b>Program Implementation</b>	Begin 12-month period before implementation	2023 to 2024
	Create draft regulations and guidance – obtain public feedback	
	Conduct webinars for the public (multiple languages)	
	Hold co-hosted educational meetings for property owners	
	Issue call for qualifications and approve qualified nonprofit developers to participate in the program	
	Begin program implementation (later than 12 months after approval or qualified nonprofit partner approvals)	2024
	Info memorandum on progress to the City Council six months after the start	2024
	Continue outreach and education to the community	2023-24
	Assess program performance in a report to City Council after one year	2025

*\*Note: Italicized items indicate additions to the work plan.*